Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1978

No. 77-1661

CHARLES F. MARCH and VERNA M. MARCH, his wife,

Petitioners,

vs.

ALLIS-CHALMERS CORPORATION, DAVID SCOTT, individually and as President of ALLIS-CHALMERS CORP., PRICE HUGHES HOOKER, J. CHESTER KRALL, CHARLES F. KING, CHRISTIAN V. WAGMAN, DONALD E. RENTZEL, ROGER FURST, JACK SHEARER, THE BOARD OF DIRECTORS OF ALLIS-CHALMERS CORP., its supervisors, managers, foremen and officers.

APPEAL FROM THE FINAL JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AT No. 77-1801.

PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States of America

CHARLES F. MARCH and
VERNA M. MARCH, his wife,

Plaintiffs,

v.

ALLIS-CHALMERS CORPORATION, DAVID SCOTT, Individually and as President of ALLIS-CHALMERS CORP., PRICE HUGHES HOOKER, J. CHESTER KRALL, CHARLES F. KING, CHRISTIAN V. WAGMAN, DONALD E. RENTZEL, ROGER FURST, JACK SHEARER, THE BOARD OF DIRECTORS OF ALLIS-CHALMERS CORP., its supervisors, managers and foremen and officers,

Defendants.

Civil Action No. 75-966

PETITION FOR WRIT OF CERTIORARI

AND NOW, TO WIT, comes your Petitioners, Charles F. March and Verna M. March, his wife, by their attorneys, Laucks & Monroe, 139 East Market Street, York, Pennsylvania, and do file this Petition for a writ of certiorari averring that:

1.

Neither the opinion of the United States District Court for the Middle District of Pennsylvania, by R. Dixon Herman, District Judge, nor the opinion of the United States Court of Appeals for the Third Circuit, by Collins J. Seitz, Chief Circuit Judge, have been published. Copies of the opinions rendered by these two Courts are contained in Appendices A and B, respectively, and are attached hereto.

2.

The final Judgment Order was entered by the United States Court of Appeals for the Third Circuit, No. 77-1801, on February 22, 1978, affirming the granting of the Defendants' motion for summary judgment previously entered by the United States District Court for the Middle District of Pennsylvania.

3.

There have been no orders respecting any rehearings, nor have there been any extensions of time granted within which to petition for certiorari.

4.

It is believed that jurisdiction is conferred over the question presented herein by reason of the provisions of 28 U.S.C. § 2101 (c).

5.

The questions presented for review herein are as follows:

I. DOES THE LAW OF PENNSYLVANIA PERMIT A CORPORATION, THROUGH ITS OFFICERS AND AGENTS, TO COMMIT THE INTENTIONAL TORT OF CONSPIRACY TO EXPOSE EMPLOYEES TO A GRAVE RISK OF HARM FOR THE PURPOSE OF INCREASING PROFITS, AND THEN PERMIT THAT CORPORATION

TO CLAIM IMMUNITY UNDER THE WORKMEN'S COMPENSATION ACT WHEN AN EMPLOYEE IS SEVERELY AND PERMANENTLY INJURED?

A. HAS THE PLAINTIFFS' COMPLAINT ALLEGED THE COMMISSION OF THE INTENTIONAL TORT OF CONSPIRACY SO AS TO PERMIT THE CONTINUANCE OF THIS ACTION REGARDLESS OF THE EXCLUSIVE REMEDY PROVISIONS OF THE PENNSYLVANIA WORKMEN'S COMPENSATION ACT?

II. UNDER THE PRESENT CIRCUMSTANCES, WOULD THE DISMISSAL OF THE PLAINTIFFS' COMPLAINT CONSTITUTE A DENIAL OF THE EQUAL PROTECTION OF THE LAWS?

III. UNDER THE PRESENT CIRCUMSTANCES, CAN THE COMMONWEALTH OF PENNSYLVANIA STATUTORILY WAIVE THE PLAINTIFF'S RIGHT TO MAINTAIN A COMMON LAW ACTION AGAINST HIS EMPLOYER FOR PERSONAL INJURIES SUFFERED WHILE IN THE COURSE OF HIS EMPLOYMENT?

IV. ARE THE PLAINTIFFS BARRED FROM PURSUING COUNT V OF THEIR COMPLAINT BECAUSE OF THEIR FAILURE TO EXHAUST THE COLLECTIVE BARGAINING GRIEVANCE PROCEDURE?

6.

The following provisions of the United States Constitution and of the statutes of the Commonwealth of Pennsylvania are involved:

I. Amendment XIV, § 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No

state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. Pennsylvania Workmen's Compensation Act, Title 77 P.S. § 72. See Appendix C for complete text.

III. Pennsylvania Workmen's Compensation Act, Title 77 P. S. § 411. See Appendix D for complete text.

IV. Pennsylvania Workmen's Compensation Act, Title 77 P. S. § 431. See Appendix E for complete text.

V. Pennsylvania Workmen's Compensation Act, Title 77 P. S. § 461. See Appendix F for complete text.

VI. Pennsylvania Workmen's Compensation Act, Title 77 P. S. § 481 (a). (In effect on April 19, 1973). See Appendix G for complete text.

7.

The facts of this case are that on or about April 18, 1975, the Plaintiffs filed a Praecipe to Issue a Writ of Summons in the Court of Common Pleas of York County, Pennsylvania. Discovery depositions were thereafter taken and on July 31, 1975, the Plaintiffs filed their Complaint in the Court of Common Pleas for York County, Pennsylvania, No. 1034, May Term, 1975. The Defendants filed a Petition to Remove the case to the United States District Court for the Middle District of Pennsylvania, which Petition was granted.

The Defendants filed a Motion for Summary Judgment, which Motion was granted, and this appeal followed.

On or about April 19, 1973, the Plaintiff, Charles F. March, then an employee of the Allis-Chalmers Corporation for over twenty years, was injured while working upon a boring mill

machine. The Plaintiff had been repeatedly ordered by a supervisor to climb upon the boring mill machine and to clean it while the machine was still in operation. The Defendant corporation had recently changed its safety practice of shutting down the boring mill machine before cleaning around it to leaving the boring mill machine on and having employees clean around it while the machine was still in motion. This was done at the specific direction of the management which had decided to increase production by intentionally exposing Plaintiff and others to grave physical danger in violation of the State safety laws, relying upon the immunity of Workman's Compensation for protection. The Plaintiff objected but was told by a superior that he would either have to work upon the boring mill machine regardless of the hazard involved, or risk losing his job. While in the act of working around the machine and while performing according to the supervisor's instruction, Mr. March's leg was pulled into the boring mill machine nearly ripping it from his body and rendering him seriously and permanently disabled.

The Plaintiff, within the statute of limitations, filed a complaint against the Defendant alleging, *inter alia*:

1. that the Defendants ". . . conspired, agreed and successfully changed the safe practice of turning off a boring mill when cleaning it and established the hazardous, unlawful and unsafe practice of cleaning the boring mill while it was in operation . . ." for the purpose of increasing production;

2. that the Defendants ". . . intentionally . . . required the Plaintiff to work upon a moving boring mill when they knew . . . that the practice was hazardous . . .";

3. that the Defendant, Allis-Chalmers, breached its contract of employment "knowing of the potential hazard" to the Plaintiff; and

4. that the conspiracy was entered into by the President and Board of Directors of the Defendant, Allis-Chalmers Corporation, for the specific purpose of increasing productivity knowing that they would be shielded by the immunity and limits of liability afforded by the Workman's Compensation Act.

Before the District Court, the Defendants moved for summary judgment on the grounds that Counts 1 through 4 of the Plaintiffs' Complaint were barred by the Pennsylvania Workman's Compensation Act, 77 P.S. § 481, and that Count 5 was barred for failure of the Plaintiff to exhaust his contractual grievance procedure, which motion was granted by a Memorandum and Order filed by the Honorable R. Dixon Herman, United States District Judge, on March 9, 1976.

A timely appeal was taken to the United States Court of Appeals for the Third Circuit, where the District Court was affirmed by a Judgment Order entered by the Honorable Collins Seitz, Chief Judge for the Court of Appeals, on February 22, 1978.

This Petition seeking a Writ of Certiorari is filed in accordance with the provisions of 28 U.S.C. § 2101 (c).

8.

Review is sought of a final judgment of a Federal Court. This case was initially filed in the Court of Common Pleas for York County, Pennsylvania, a court of general jurisdiction. Upon the Defendants' Petition being filed, this case was removed to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1441. Federal jurisdiction in the instant case was predicated upon 28 U.S.C. § 1332, in that the parties are of diverse citizenship and the amount in controversy exceeds $10,000.00, exclusive of interest and costs, and 29 U.S.C. § 185, in that Count V of the Plaintiff's Complaint alleges matters which constitute a labor dispute.

9.

The reasons relied upon for the allowance of the Writ, and a concise argument in support of those reasons are:

I. A federal court has decided an important question of state law in such a manner as to be in conflict with existing state law.

The Plaintiffs have alleged that corporate employees did conspire and agree to, and did successfully, change the safe practice of turning off the boring mill machine when cleaning it and established in its place a hazardous, unlawful and unsafe practice of cleaning the boring mill machine while it was in operation. The intention tort of conspiracy is recognized in the Commonwealth of Pennsylvania and has been properly pleaded by the Plaintiffs. See *VanGilder* v. *Bower*, 314 Pa. 327, 171 A 600 (1934); *Collins* v. *Cronin*, 117 Pa. 35 (11) A. 869 (1887).

The Pennsylvania Workman's Compensation Act, 77 P. S. § 481 (a), provides in relevant part that "the liability of an employer under this act shall be exclusive and in place of any and all other liability . . . to damages in any action at law or otherwise on account of any injury or death as defined in § 301 (c) (1) and (2) [77 P. S. § 411 (1) and (2)]. Although this language appears to be stated in absolute terms, the District Court noted on page 3 of its Opinion that the exclusive remedy provisions of the above cited section could be avoided or a complaint alleged that ". . . the employer has committed intentional tortious conduct . . ." The District Court was correct as this has been the holding in numerous cases. See *Ulicny* v. *National Dust Collector Corp.*, 391 F. Supp. 1265, 1268 (E.D. Pa. 1975); *Readinger* v. *Goddshall*, 201 Pa. Super. 134, 191 A 2d 694 (1963); *Sumski* v. *Sauquoit Silk Company, Inc.*, 66 Lackawanna L. J. 118, 122-123 (1965); *Beale v. Holliman*, 8 D & C 2d 758 (1958).

Despite the exception to the statutory language which the District Court recognized was applicable, and despite the literal language contained in the Plaintiffs' Complaint, which should have been viewed in a light most favorable to the Plaintiff in considering the Defendants' Motion for Summary Judgment, *Caplan* v. *Roberts*, 506 F. 2d 1039 (9th Cir. 1974), the District Court proceeded to characterize the true nature of the Plaintiff's injury as employer malfeasance and not the commission of an intentional tort, leaving the District Court with the inescapable result that Counts 1 through 4 of the Plaintiffs' Complaint had to be dismissed.

The Defendants placed strong reliance on the line of cases in which, in attempts to circumvent the exclusive remedy provisions of the Workman's Compensation Act, it was pleaded that the employer was guilty of gross negligence or recklessness. See *Ulicny* v. *National Dust Collectors Corp.*, 391 F. Supp. 1265 (E. D. Pa. 1975). In those cases the complaint was dismissed. The Plaintiffs would assert that the literal language of the Plaintiffs' Complaint pleads an intentional tort and not merely some form of negligence. This case is also not, as the Defendants argued, one premised merely upon an allegation that the Defendant violated a safety statute through negligence or inadvertence. *Welsh* v. *Pittsburgh Terminal Coal Corporation*, 303 Pa. 405, 154 A. 716 (1931).

It must also be pointed out that all of the Defendants have been sued in their individual capacities as well as representatives of the Defendant corporation, and it is clear that under the "fellow employee" statute that the individual Defendants would be liable for any intentional wrong committed upon the person of the Plaintiff. See The Pennsylvania Workman's Compensation Act, 77 P.S. § 72.

II. A federal court has decided two important questions of federal law which have not been, but which should be, decided by this Honorable Court.

A. It must be recognized that a state's decision to replace the common law right to sue for the negligent or intentional infliction of a tort with the Workman's Compensation remedy is not in of itself a denial of due process. *New York Central Railroad Company* v. *White*, 243 U.S. 188 (1917). However, the argument being proposed by the Plaintiffs is not merely that the state has removed the Plaintiffs' common law right. The argument is that the statute in question provides for a conclusive presumption in favor of the employee accepting the Workman's Compensation benefits in place of the common law right, unless the employee makes a written statement to the contrary, and yet does not give the employee any notification of the conclusive presumption or of the right to elect against the Workman's Compensation coverage.

Although the Commonwealth of Pennsylvania might not have been compelled by the constitution or any applicable statute to grant to employees of companies providing Workman's Compensation coverage the right to "elect" against such coverage, once the decision has been chosen to extend those rights to employees, then that right may not be abrogated absent some fundamentally fair procedure which would, at the very least, inform the prospective employee of the potential result of his failure to elect to retain his common law rights. *Goss* v. *Lopez*, 419 U.S. 565, 574 (1975).

The question of how much due process need be applied does not have to be answered at this juncture, although the question may later arise as to exactly how much due process is appropriate in the present circumstances. See

Morrissey v. *Brewer*, 408 U.S. 471, 481 (1972). What is clear is that in the present case there was absolutely no due process of any type followed. Although the then applicable section of the Pennsylvania Workman's Compensation Act, 77 P.S. § 461, provided that a prospective employee was permitted to retain his common law rights by filing an express statement to that effect within ten (10) days after the acceptance of employment, it is clear that at no time in the Plaintiff's employment was he informed of this right so that he could consciously decide whether or not to accept the Workman's Compensation benefits or to retain his common law rights. See *Ventura* v. *Skylark Motel, Inc.*, 431 Pa. 459, 246 A. 2d 353 (1959).

Further, the Supreme Court of Pennsylvania has viewed the election between the common law right and the statutory remedy as one to be voluntarily contracted away by the parties to an employment agreement. *Repyneck* v. *Tarantino*, 403 Pa. 300, 303, 169 A. 2d 527 (1961). If this is so, then it is clear that any voluntary election requires at the very least that the prospective employee be informed of his rights under the common law as well as under the statutory coverage, and that he voluntarily, intelligently and knowingly make an election between the two. The failure of the statute to provide that a respective employee be informed of his election, and failure of the employer to give that notice on its own renders any election, or failure to elect, involuntary and unknowing and as such invalid. *D. H. Overmyer Company* v. *Frick Company*, 405 U. S. 174 (1972).

Also, we are presented with the problem that the statute applicable at the time of the Plaintiff's injury created the conclusive presumption that the Workman's Compensation benefits were binding and did not give the Plaintiff the opportunity to assert contrary to that

presumption that he desired to retain his common law rights. Although the facts were different, this Court has ruled that conclusive presumptions can constitute the denial of due process in proper circumstances. *Vlandis* v. *Kline*, 412 U.S. 441 (1973).

B. Although the law permits the state to circumscribe various classifications and to apply the law differently as to each classification, where there exists no rational basis for the distinctions, the various classifications must fall and the law must be applied evenly and equal. *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

It is well decided that where an employee violates safety statutes or regulations, he loses the protections afforded by the Workman's Compensation Act. See *Hyzy* v. *Pittsburgh Coal Company*, 384 Pa. 316, 121 A. 2d 85 (1956); 77 P.S. § 431.

By the same respects, where an employer has intentionally violated a safety statute, that employer should not be permitted to dole out the relatively small amount of benefits afforded by the Workman's Compensation Act while permitting the employer to hide behind the exclusive remedy provisions of the Act, shielded from liability for the full harm done. Not to expose an employer to liability for his statutory violations while holding an employee liable for his statutory violations constitutes a denial of the equal protection of the laws as is guaranteed by the U. S. Constitution. *See Hyzy* v. *Pittsburgh Coal Company, supra* at 323 (Musmanno, dissenting).

The Workman's Compensation Act was passed for the purpose of protecting employees. *Taylor* v. *Ewing*, 166 Pa. Super. 21, 70 A.2d 456 (1950). Keeping in mind that we are discussing the narrow situations where an employer intentionally violates safety standards, the Plain-

tiff would assert that the employer who has to pay nothing but the limited Workman's Compensation benefits is indeed getting off with paying less than if you were faced with the prospect of civil suit. In effect, the Workman's Compensation Act acts as a shield to employers who deliberately violate safety standards so as to increase production, and in doing so deliberately expose employees to the extreme risk of harm.

C. This Court has held that where an employee has a dispute which can be handled through the management-union contractual grievance procedure, that an employee is barred from litigating that issue where he has first failed to follow the collective bargaining grievance procedure. *Republic Steel Corporation* v. *Maddox*, 379 U.S. 650 (1965). However, the Plaintiffs would assert that this holding should have no application where, although a suit is based upon a guarantee contained in the management-union contract, the grievance procedure would provide a totally ineffective remedy for the Plaintiff.

Article 26.1 of the labor contract involved provides in relevant part that the company shall take reasonable measures in order to provide control of hazards to which employees are subjected at their places of work. This section goes on to state that "reasonable measures" is defined to mean compliance with effective and applicable state and federal laws which have been finally interpreted and from which right of further review was not available.

The Plaintiff bases his action for personal injury upon the breach of this contractural provision in that it is alleged that the company did not take reasonable measure to guard against the hazard involved, especially

in light of the fact that state and federal safety regulations were intentionally disregarded. The Plaintiffs admit that there was no grievance filed relative to the unsafe working conditions pursuant to Article 26.1 of the management-union contract. The grievance procedure is set out in Section 21.1 of the contract, with the grievance procedure culminating in binding arbitration. A reading of the contract indicates that the only matter that could be settled by following the grievance procedure would be whether or not the company had provided a safe place to work or whether the company would correct the defect in the future. At this point, the correcting of any alleged defect is an issue that is of no meaningful concern to the Plaintiff.

The Plaintiff does not seek to have the Defendant correct the allegedly breached provision of the contract, nor does the Plaintiff care whether or not the Defendant ever reinstitutes the prior safety practice. At no time in the Plaintiff's complaint does the Plaintiff seek to have the Defendants provide a safer place in which to work. Even if the Plaintiff had followed the grievance procedure and the Defendant responded by providing a safer place to work, that still would not have settled the question of the Plaintiff's right to damages because of the breach of the management-union contract.

As such, the Plaintiff should not be required to exhaust the grievance procedure when the procedure involved would be patently insufficient to provide any of the relief the Plaintiffs seek, and when it is clear that the grievance procedure was never intended to create a forum for the litigation of personal injury disputes.

The Plaintiff argued in the Court below that the agreement must be seen collaterally as vesting certain personal rights in the Plaintiff in addition to those rights bestowed upon the Plaintiff merely as a member of his

union. In effect, the Plaintiff becomes a third part beneficiary of the contract between his union and his employer and he has the ability to enforce those rights when they are violated. See *Hillbrook, Inc.* v. *Nice,* 237 Pa. Super. 565, 352 A. 2d 148 (1975). The Plaintiffs believe that the exclusive remedy provisions of the Workman's Compensation Act do not have to be considered as exclusive where an employer has made separate and independent contractual guarantees that create rights and obligations independent of whatever statutes are in existence.

If an employer can breach his contract and still only be held to the payment of statutory benefits that would have been due and owing regardless of any contractual provision, then the contractual provision must be seen as being superfluous unless it is held that the contractual guarantee constitutes a separate form of liability over and above, and in addition to, any statutory remedy that the employee would have regardless of any contractual agreement.

10.

Copies of the opinions filed below are contained in Appendices hereto. See Appendix A for the opinion of the United States District Court for the Middle District of Pennsylvania, and Appendix B for the opinion of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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APPENDIX A

Memorandum

IN THE UNITED STATES DISTRICT COURT

For the Middle District of Pennsylvania

Filed
Harrisburg, Pa.
Mar 9 1977
Donald R. Berry, Clerk
Per .....
Deputy Clerk

CHARLES F. MARCH and
VERNA M. MARCH, his wife,

Plaintiffs,

v.

ALLIS-CHALMERS CORPORATION, DAVID SCOTT, Individually and as President of ALLIS-CHALMERS CORP., PRICE HUGHES HOOKER, J. CHESTER KRALL, CHARLES F. KING, CHRISTIAN V. WAGMAN, DONALD E. RENTZEL, ROGER FURST, JACK SHEARER, THE BOARD OF DIRECTORS OF ALLIS-CHALMERS CORP., its supervisors, managers and foremen and officers,

Defendants.

Civil Action No. 75-966

On April 18, 1975 plaintiffs commenced a common law action for monetary damages in the York County Court arising from injuries allegedly suffered as a direct result of a con-

spiracy conceived by defendants for the purpose of increasing productivity, in violation of Pennsylvania safety laws but purportedly with the knowledge that their actions would be shielded by the exclusiveness of the relief provided under the Workmen's Compensation Act ("Act"), 77 P.S. § 411, et seq. The suit was removed to federal court pursuant to 28 U.S.C. § 1441 and 29 U.S.C. § 185(a), and plaintiffs' motion for remand was denied by order of this court on January 9, 1976. Presently before the court is defendants' motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, which will be granted for the reasons which follow.

The material facts and circumstances underlying the present controversy as gleaned from the pleadings, and particularly plaintiffs' complaint, are essentially uncontradicted.[1] On or before April 19, 1973 defendants allegedly entered into a conspiracy to speed up production and maximize profits by intentionally effectuating the hazardous and unsafe practice of cleaning the defendant corporation's boring mills while they were still in operation, in violation of Pennsylvania safety laws and regulations; to wit, 43 P.S. § 25-2. Plaintiff Charles F. March, an employee of defendant corporation for over twenty years, was repeatedly ordered by a supervisor, at the direction of defendants, to climb up on the boring mill machine and clean it while it was still in motion. Plaintiff Charles F. March purportedly objected to this procedure but defendants, knowing that the proposed policy of cleaning the machines while they were operating was hazardous and in violation of Pennsylvania safety regulations and nevertheless refusing to provide specialized training or safety equipment, insisted that he observe the new procedure at the jeopardy of his job.

[1] Defendants apparently have assumed the position that even in the event that the allegations contained in plaintiffs' complaint can be established, plaintiffs still could prove no set of facts which would entitle them to relief.

Thereafter, on April 19, 1973 while plaintiff Charles F. March was working around a boring mill machine and cleaning the machine in accordance with defendants' instructions, his leg was pulled into the machine as a result of which he sustained serious and permanently disabling injuries. Plaintiff Charles F. March was in the employ of defendant corporation at the time and subject to the Pennsylvania Workmen's Compensation Act, by its terms. Accordingly, plaintiff Charles F. March received benefits under the Act to compensate him for his injuries incurred while in the employ of defendant corporation.

Defendants, in support of their motion for summary judgment, contend that plaintiffs' common law action is precluded by the exclusiveness of the relief afforded under the Act, 77 P.S. § 481, as amended, and by plaintiffs' failure to pursue the grievance procedure outlined in Article XXI of the collective bargaining agreement between defendant corporation and the International Association of Mechanics and Aerospace Workers, Local No. 1400, of which plaintiff Charles F. March is a member. Plaintiffs in turn have raised various challenges to the application of the Act and the collective bargaining agreement in this instance and to the constitutionality of several provisions of the Act in general, which will be considered seriatim.

It is well-established, under a fair construction of § 303(a) of the Act, 77 P.S. § 481(a), that where liability under the provisions of the Act is imposed it constitutes the employer's whole liability pursuant to the statutory agreement between the employer and the employee which is embodied in the Act, exclusive of all common law actions. SOCHA v. METZ, 385 Pa. 632, 637 (1956); HYZY v. PITTSBURGH COAL CO., 384 Pa. 316, 318 (1956). See HARTWELL v. ALLIED

CHEMICAL CORP., 320 F.Supp. 75, 77 (W.D. Pa. 1970);[2] ULICNY v. NAT'L DUST COLLECTOR CORP., 391 F. Supp. 1265 (E.D. Pa. 1975).

Plaintiffs, on the other hand, rely on that line of cases which have delineated an exception to the applicability of the Act in situations where the employer has committed intentional tortious conduct against an employee. See ULICNY v. NAT'L DUST COLLECTOR CORP., *supra;* READINGER v. GOTTSHALL, 201 Pa. Super. 134 (1963). There is an immediate distinction, however, which is recognized in those cases and which is relevant to the circumstances of this case. In view of the fact that the common law tort action is founded on the nonaccidental character of the *injury* insofar as the defendant employer is concerned, the courts have uniformly differentiated between these instances where there is genuine intentional injury inflicted by the employer and those where the injury sustained is simply accidental as the result of an intentional misfeasance or violation of a statutory duty. See ULICNY v. NAT'L DUST COLLECTOR CORP., *supra,* at 1268. Where the injury is in fact intentionally inflicted by the employer then the Act is construed not to apply and the existing common law remedies are preserved. Where, on the other hand, the injury can be characterized as "accidental" then the Act is intended to provide a new remedy for the protection of the employees.

In this case, it readily appears that defendants did not intend the injuries to plaintiff Charles F. March and entertained no animosity towards him. The most literal construction of plaintiffs' complaint indicates only that plaintiff

[2] It also appears that in certain circumstances injuries may come within the purview of the Act and be afforded no compensation, and nevertheless be barred as a basis for imposing liability on the employer in a common law action pursuant to § 481(a).

Charles F. March's injuries were accidentally caused as the result of defendants' conspiracy to intentionally violate the governing Pennsylvania safety laws by failing to provide a safe place to work, which thereby recklessly and wantonly exposed plaintiff Charles F. March to risk of injury. The injury itself remained sudden, unexpected and unintended even though defendants' intentional conduct in all likelihood rendered injury more possible. Therefore we conclude that plaintiff Charles F. March's injuries are covered by the provisions of the Act.

Plaintiffs further argue that defendants' conspiracy to intentionally violate the law and expose plaintiff Charles F. March to greater risk of injury placed their conduct outside the scope of his employment and "estops" them from asserting the Act as a bar to plaintiffs' common law remedies, even though the injuries in fact fall within the coverage of the Act and benefits there provided. This estoppel concept is not even intimated in the cases cited by plaintiffs in support of the proposition and has never been proposed. See HYZY v. PITTSBURGH COAL CO., *supra,* at 320-23 (dissenting opinion by Justice Musmanno); SUMSKI v. SANQUOIT SILK CO., INC., 66 Lacka. Jur. 118 (1965). Where the courts have deemed the employer's intentional or reckless conduct to place the injuries subsequently suffered by an employee outside of the ambit and terms of the employment relationship and the Act, they have concluded that the Act is not applicable and have allowed the employee to pursue his common law remedies. The cases clearly do not contemplate the availability of benefits both under the Act and pursuant to the common law remedies, which would be tantamount to double recovery for the same accidental injuries. Rather, where the injuries fall within the purview of the Act and the Act is effective, the assumption is that the employee is satisfied with

his agreement regardless of the actual measure of compensation which he receives. HARTWELL v. ALLIED CHEMICAL CORP., 457 F.2d 1335, 1338 (3d Cir. 1972). Plaintiff Charles F. March has received benefits under the Act for the same injuries complained of in this action and, accordingly, plaintiffs' instant suit is subject to dismissal based on the exclusiveness of the Workmen's Compensation remedy, 77 P.S. § 481(a).

Plaintiffs also contend that former § 302(a) of the Act, 77 P.S. § 461,[3] effective at the time when plaintiff Charles F. March suffered his injuries, in effect constitutes an unconstitutional "waiver" of one's rights in light of the United States Supreme Court decisions in FUENTES v. SHEVIN, 407 U.S. 67, 32 L Ed 2d 556 (1972); and OVERMEYER CO. v. FRICK CO., 405 U.S. 174, 31 L Ed 2d 124 (1972). Plaintiffs maintain that § 461 is unconstitutional on its face in that it fails to provide for notice to adult employees of its provisions and their effect of presumptively "waiving" any common law remedies, in contravention of the minimum requirements of due process under the Fourteenth Amendment. Plaintiffs further contend that even in the event that § 461 is found constitutional on its face, it is clearly unconstitutional in its application in this case where plaintiff Charles F. March was never informed of the provisions of the Act or of the presumption embodied in § 461 which provides that the Act becomes applicable and provides an exclusive remedy in certain situations, upon accepting employment with defendant employer.

Both FUENTES v. SHEVIN and OVERMEYER CO. v. FRICK CO. are inapposite based on the facts and circumstances out of which each decision was reached. The

[3] Section 461 of 77 P.S. was entirely rewritten in 1974, P.L. 782, No. 263, § 5, effective February 5, 1975.

OVERMEYER case involved a contractual confession of judgment provision which was construed by the court to constitute a voluntary, intelligent and knowing waiver of due process rights to prejudgment notice and hearing by the corporate entity which executed and delivered an installment note containing the provision to its corporate creditor; whereas, the present case concerns a statutory provision which simply provides for an election of remedies with one choice being the relinquishment of common law remedies in return for a new statutory provision which authorized a "temporary taking" of one's property without adequate and timely prejudgment replevin notice or opportunity to be heard. The instant case involves no "taking" of property at all and entails only the question of whether an employee may be presumed to elect a statutory remedy, which was designed and promulgated to protect his interests, upon acceptance of employment with a statutory employer and in the absence of a declaration to the contrary. *Cf,* DUPREE v. BARNEY, 193 Pa. Super. 331, 338-39 (1960).

Nor do we draw any support for plaintiffs' contention that § 461 violates due process from the reasoning and legal justifications set forth in the Supreme Court decisions in FUENTES v. SHEVIN and OVERMEYER CO. v. FRICK CO. Section 461 provides, in pertinent part, as follows:

> "In every contract of hiring . . . it shall be conclusively presumed that the parties have accepted the provisions of Article 3 of this Act, and have agreed to be bound thereby, unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing, from either party to the other, that the provisions of Article 3 of this Act are not intended to apply and unless a true copy of such written statement . . . be filed with the department within ten (10) days after such service."

We do not construe this provision to amount to a "waiver of any constitutional rights such as would invoke the legal principles concerning waivers which were developed in FUENTES and OVERMEYER. Rather we find § 461 to provide an election between remedies, with a presumption that the statutory remedy designed specifically to protect employees has been chosen in the absence of an explicit choice.

Initially each employee is given the choice of retaining his common law right to sue his employer in a common law action for negligence or, in exchange for this common law remedy, acquiring a new contractual remedy under the Act which provides compensation for an occupational injury *regardless* of whether the injury is caused by the negligence of his employer. It is precisely because of the liberalized access to compensation for work-related injuries and the enlarged protection afforded to the employees under the Act that the conclusive presumption of § 461 in contractual arrangements having their genesis under the Act has been upheld. *Cf,* DUPREE v. BARNEY, *supra,* at 338-39. The presumption in favor of benefits under the Act is not in the nature of a waiver, but is in fact a presumption of more favorable treatment to the employee unless positive action is taken to rescind those benefits. The Act creates a contractual agreement between the employer and each employee by which each employee receives greater protection for the valid consideration of surrendering his common law action for negligence. The Act provides that the remedies under it are exclusive of all common law actions, provided the injuries sustained fall within the provisions of the Act; that is, the injury is accidental in nature. The employer does not hide behind the provisions of the Act in order to avoid liability. Rather, the employer is bound by the compensation agreement whenever it is applicable provided only that this is the extent of his

liability. Plaintiffs impliedly accepted the benefits afforded under the Act by not expressly rejecting them on assuming employment with defendant corporation, and they endorsed that election when they were given and accepted compensation for plaintiff Charles F. March's accident. Plaintiffs now must be conclusively deemed to be satisfied with their agreement regardless of the amount of compensation actually received. And under no circumstances would what would amount to a double recovery for the same accidental or intentional injury be indicated *or* warranted under the Act. Moreover, in view of the fact that the presumption operates in favor of the employee and enables him to avail himself of the greater protection afforded under the Act, compliance with minimum due process safeguards is not necessary under the Fourteenth Amendment.

Plaintiffs also have raised an equal protection argument in questioning the disparity in treatment between employers and employees as concerns their liability for statutory violations under the Act. Plaintiffs emphasize that employers remain bound by the provisions of the Act and their agreement to provide compensation for occupational injuries *regardless* of negligence by the employer which emanates out of the Act even when they are found to have intentionally violated a safety statute, while employees are precluded from obtaining benefits under the Act if they are similarly found to have violated a statute at the time they sustained their injuries. *Cf,* HUZY v. PITTSBURGH COAL CO., *supra,* at 320-23. Plaintiffs contend there is no rational basis for this uneven and unequal treatment under the Act and therefore assert that the Act violates the Equal Protection Clause of the Fourteenth Amendment.

In relying on the dissenting opinion of Musmanno in the HUZY decision in support of their protection argument, plaintiffs both misconstrue the nature of the benefits provided to employees under the Act and ignore the conclusions of the majority of the Pennsylvania Supreme Court in HUZY. As stated before, the Act is remedial in nature with the design of providing greater protection to employees and affording compensation for work-related injuries *regardless* of negligence on the part of the employer. In liberally construing the beneficent provisions of the Act in favor of that protection, the courts have upheld the conclusive presumption originally found in § 461 and have also held employers bound to the liability imposed by the Act in the absence of genuine intentional injury caused by the employer. On the other hand, because the provisions of the Act operate in favor of the employees, the employees are enjoined from sharing in the benefits afforded under the Act where they are found to have violated a statute in incurring the injury and are seeking compensation with unclean hands.

The majority of the court in HUZY relied on the decision in WELSCH v. PITTSBURGH TERMINAL COAL CORP., 303 Pa. 405 (1931) in finding that not all cases involving accidents which have occurred as a result of a breach of statutory provisions are excluded from the purview of the Act, and that the remedies under the Act are the only ones available where it is alleged that the accident resulted by reason of neglect of a statutory duty by the *employer*. The court in WELSCH distinguished those cases which held that where an employer expressly directs an employee to perform that which is forbidden by statute and the employee is subsequently injured, there is no employer-employee relationship and the Act is *entirely* inapplicable. Where, however, the employer violates a statutory provision and the injuries are nevertheless deemed

to fall within the meaning of the Act, the Act provides the *exclusive* remedy for the employee; "the Act, embodying as it does a great public policy, is too valuable to be frittered away by a restrictive construction" which would preclude compensation under the Act whenever an accident resulted from a breach of statutory provisions. WELSCH v. PITTSBURGH TERMINAL COAL CORP., *supra* at 407-08. Clearly the disparate treatment between employers and employees concerning statutory violations is founded on a valid public policy and is based on a rational basis in accordance with equal protection of the law mandates. *Cf*, DANDRIDGE v. WILLIAMS, 397 U.S. 471, 25 L Ed 2d 491 (1970), *reh. denied*, 398 U.S. 914 (1970).

Finally, defendants contend that Count 5 of the complaint alleges that defendants breached Paragraph 26.1 of the collective bargaining agreement entered into between defendant corporation and the union of which plaintiff Charles E. March was a member by failing to provide specialized training, safety equipment, special procedures, or take other reasonable measures to prevent job hazards as the circumstances warranted. Pursuant to Articles I and XXI of the Agreement, however, defendants maintain that plaintiffs have not exhausted the specific contract grievance procedures which are outlined in those articles and that they are thereby precluded from continuing with this action in federal court. REPUBLIC STEEL CORP. v. MADDOX, 379 U.S. 650, 13 L Ed 2d 580 (1965).

Plaintiffs, on the other hand, refer to the meaning of a contract grievance which is set forth in § 21.1 of the Agreement in arguing that their claim for damages arising out of the alleged breach of the agreement is not equivalent to the question as to whether or not defendant corporation provided a safe place to work and, accordingly, there is no requirement to pursue

the grievance procedure in this instance. Plaintiffs indicate they seek to use the alleged breach of the contract as a basis for a suit in a way which was totally unforeseen under the contract and is unrelated to the grievance procedure.

We conclude that to the extent plaintiffs rely on a breach of the collective bargaining agreement as a basis for this action, they are required to pursue and fully exhaust the agreed-upon grievance procedure before they may bring suit in the federal courts. REPUBLIC STEEL CORP. v. MADDOX, *supra.* For the same reasons that plaintiffs maintain that the agreement does not address an action for damages and does not require recourse to the grievance procedure, the agreement also does not contemplate and will not support an action for damages based on a breach of its provisions. With respect to plaintiffs' theory that they derive personal rights in a safe place to work as a third-party-beneficiary from the contract between the union and his employer and therefore can utilize these rights as an independent basis for their damage action, we merely reiterate that the remedies afforded under the Act are exclusive of all common law actions and constitute the employer's whole liability for the accident. See SOCHA v. METZ, *supra;* HYZY v. PITTSBURGH COAL CO., *supra.*

Summary judgment may only be granted if the court is convinced from its review of the evidential sources available that no genuine issue as to a material fact remains for trial, and that the moving party is entitled to judgment as a matter of law. SCOTT v. PLANTE, 532 F.2d 939 (3d Cir. 1976). In considering a motion for summary judgment, all inferences to be drawn from the underlying facts contained in the pleadings and related documents must be viewed in the light most favorable to the party opposing the motion and it is the duty of the court to resolve all doubts as to the existence of a

genuine issue as to a material fact against the movant. TECHNOGRAPH PRINTED CIRCUITS, INC. v. METHODE ELECTRONICS, INC., 356 F.2d 442 (7th Cir. 1966), *cert. denied,* 384 U.S. 950 (1966). Nevertheless, we conclude that even under a liberal construction of the allegations contained in the complaint, no genuine issue as to a material fact remains for trial and that defendants are entitled to judgment as a matter of law.

An appropriate order will be entered.

R. DIXON HERMAN,
R. Dixon Herman,
United States District Judge.

Dated: March 9th, 1977.

Order

IN THE UNITED STATES DISTRICT COURT

For the Middle District of Pennsylvania

CHARLES F. MARCH, and
VERNA M. MARCH, his wife,

Plaintiffs,

v.

ALLIS-CHALMERS CORPORATION, DAVID SCOTT, Individually and as President of ALLIS-CHALMERS CORP., PRICE HUGHES HOOKER, J. CHESTER KRALL, CHARLES F. KING, CHRISTIAN V. WAGMAN, DONALD E. RENTZEL, ROGER FURST, JACK SHEARER, THE BOARD OF DIRECTORS OF ALLIS-CHALMERS CORP., its supervisors, managers and foremen and officers,

Defendants.

Civil Action No. 75-966

AND NOW, this 9th day of March 1977, in accordance with the memorandum filed this date in the above-captioned case, IT IS ORDERED that defendants' motion for summary judgment be and is hereby granted and entered against plaintiffs.

Filed
Harrisburg, Pa.
Mar 9 1977
Donald R. Berry, Clerk
Per .....
Deputy Clerk

R. DIXON HERMAN,
R. Dixon Herman,
United States District Judge.

APPENDIX B

Judgment Order

UNITED STATES COURT OF APPEALS

For the Third Circuit

No. 77-1801

MARCH, Charles F. and MARCH, VERNA M.,

Appellants,

v.

ALLIS-CHALMERS CORPORATION, SCOTT, David, indiv. and as Pres. of Allis-Chalmers Corp., HOOKER, Price Hughes, KRALL, J. Chester, KING, Charles F., WAGMAN, Christian V., RENTZEL, Donald E., FURST, Roger, SHEARER, Jack, THE BOARD OF DIRECTORS OF ALLIS-CHALMERS CORP., Its supervisors, managers and foremen and officers.

(Civil No. 75-966, M.D. of Pa.)

Submitted Under Third Circuit Rule 12(6)
February 17, 1978

Before SEITZ, *Chief Judge,* ROSENN and GARTH, *Circuit Judges.*

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

COLLINS J. SEITZ,
Chief Judge.

Attest:

THOMAS F. QUINN,
Thomas F. Quinn,
Clerk.

APPENDIX C

Pennsylvania Workman's Compensation Act, 77 P.S. § 72

LIABILITY OF FELLOW EMPLOYE

If disability or death is compensable under this act, a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong.

APPENDIX D

Pennsylvania Workman's Compensation Act, 77 P.S. § 411

"INJURY," "PERSONAL INJURY," and "injury arising in the course of his employment" DEFINED

(1) The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employe, regardless of his previous physical condition, arising in the course of his employment and related thereto, and such disease or infection as naturally results from the injury or is aggravated, reactivated or accelerated by the injury; and wherever death is mentioned as a cause for compensation under this act, it shall mean only death resulting from such injury and its resultant effects, and occurring within three hundred weeks after the injury. The term "injury arising in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employe because of reasons personal to him, and not directed against him as an employe or because of his employment; but shall include all other injuries sustained while the employe is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere, and shall include all injuries caused by the condition on the premises or by the operation of the employer's business or affairs thereon, sustained by the employe, who, though not so engaged, is injured upon the premises occupied by or under the control of the employer, or upon which the employer's business or affairs are being carried on, the employe's presence thereon being required by the nature of his employment.

APPENDIX E

Pennsylvania Workman's Compensation Act, 77 P.S. § 431

COMPENSATION ACCORDING TO SCHEDULE; INJURY OR DEATH SELF-INFLICTED OR CAUSED BY VIOLATION OF LAW

Every employer shall be liable for compensation for personal injury to, or for the death of each employe, by an injury in the course of his employment, and such compensation shall be paid in all cases by the employer, without regard to negligence, according to the schedule contained in sections three hundred and six and three hundred and seven of this article: Provided, That no compensation shall be paid when the injury or death is intentionally self inflicted, or is caused by the employe's violation of law, but the burden of proof of such fact shall be upon the employer, and no compensation shall be paid if, during hostile attacks on the United States, injury or death of employes results solely from military activities of the armed forces of the United States or from military activities or enemy sabotage of a foreign power.

APPENDIX F

Pennsylvania Workman's Compensation Act, 77 P.S. § 461

In every contract of hiring . . . it shall be *conclusively presumed* that the parties have accepted the provisions of Article 3 of this Act, and have agreed to be bound thereby, unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing, from either party to the other, that the provisions of Article 3 of this Act are not intended to apply, and unless a true copy of such written statement, accompanied by proof of service thereof upon the other party, setting forth under oath or affirmation the time, place and manner of such service, be filed with the department within ten (10) days after such service. Emphasis added.

APPENDIX G

Pennsylvania Workman's Compensation Act, 77 P.S. § 481

EXCLUSIVENESS OF REMEDY; ACTIONS BY AND AGAINST THIRD PARTY; CONTRACT INDEMNIFYING THIRD PARTY

(a) The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employes, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.

Supreme Court, U. S.
FILED
JUN 22 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

No. 77-1661

CHARLES F. MARCH and VERNA M. MARCH, his wife,
Petitioners,

vs.

ALLIS-CHALMERS CORPORATION, DAVID SCOTT, individually and as President of ALLIS-CHALMERS CORP., PRICE HUGHES HOOKER, J. CHESTER KRALL, CHARLES F. KING, CHRISTIAN V. WAGMAN, DONALD E. RENTZEL, ROGER FURST, JACK SHEARER, THE BOARD OF DIRECTORS OF ALLIS-CHALMERS CORP., its supervisors, managers, foremen and officers,
Respondents.

APPEAL FROM THE FINAL JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AT No. 77-1801.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

October Term, 1978

CHARLES F. MARCH and
VERNA M. MARCH, his wife,

Petitioners,

vs.

ALLIS-CHALMERS CORPORATION, DAVID SCOTT, individually and as President of ALLIS-CHALMERS CORP., PRICE HUGHES HOOKER, J. CHESTER KRALL, CHARLES F. KING, CHRISTIAN V. WAGMAN, DONALD E. RENTZEL, ROGER FURST, JACK SHEARER, THE BOARD OF DIRECTORS OF ALLIS-CHALMERS CORP., its supervisors, managers, foremen and officers,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Counter Statement of the Case

The present matter involves a lawsuit which was instituted by Charles F. March, and his wife, Verna, against Allis-Chalmers Corporation (hereinafter referred to as "Allis-Chalmers" or "the employer") for personal injuries sustained by Mr. March (hereinafter referred to as "the employee") on April 19, 1973, while in the course of his employment with Allis-Chalmers in York County, Pennsylvania. On April 18, 1975, the Petitioner-employee commenced this action by

filing a Praecipe to Issue a Writ of Summons in the Court of Common Pleas, York County, Pennsylvania. Thereafter, on July 31, 1975, Petitioners filed a Complaint against Allis-Chalmers, the Board of Directors, and numerous officers and employees of that company (R. 4a-12a). The Complaint, which was divided into five (5) Counts, including two derivative Counts (II and IV) on behalf of the wife Plaintiff, recited in relevant part the following averments:

> "(1) That Defendant Corporation, through its President, Board of Directors, Officers and Agents, unlawfully conspired to speed up production output of the corporation in order to increase profits by intentionally violating Pennsylvania safety laws and regulations, to wit, the Act of May 18, 1937, P.L. 654, as amended, 43 P.S. § 25-2. The same being an unlawful combination which was further encouraged by the conscious knowledge that the corporation, its officers, agents and employees, could only allegedly suffer limited liability by virtue of the violation of said safety laws as provided by the Act of June 2, 1915, P.L. 736, as amended 77 P.S. § 1 *et seq.* . . .
>
> . . . Specifically, the Defendants conspired, agreed, and successfully changed the safe practice of turning off a boring mill while cleaning it and substituted and established the hazardous, unlawful and unsafe practice of cleaning the boring mill while it was in operation thereby increasing output and placing the plaintiff and others in a position of peril and jeopardy . . ."
>
> (2) . . . "On or before April 19, 1973, as a direct result of certain alleged immunities and limits of liability afforded by the Workmen's Compensation Act of June 2, 1915, P.L. 736, as amended 77 P.S. § 1 *et seq.*, the Defendants have intentionally, knowingly recklessly and wantonly required the plaintiff to work upon a moving boring mill when they knew or should have known that the practice was hazardous, unsafe and in violation of the Act of May 18, 1937, P.L. 654, as amended, 43 P.S. § 25-2. The Defendants, knowing of the potential hazards

> provided by requiring the plaintiff to work in violation of said safety act failed to provide the plaintiff with specialized training thereby intentionally exposing him and other persons to hazardous working conditions solely for the purpose of raising and increasing company profits . . ."
>
> (3) . . . "On or before April 19, 1973, the plaintiff was covered by the provisions of an agreement between the International Association of Machinists and Aerospace Workers and the Allis-Chalmers Corporation, York Plant" . . . "the said contract provided the requirement that the Defendant Corporation should have taken reasonable measures to prevent job hazards to which employees are subject to their places of work" . . . "The Defendant breached the said agreement by failing to take reasonable measures to prevent job hazards . . ."

On August 14, 1975, Defendants Filed an Amended Answer to the Complaint, wherein they averred the following affirmative defenses: (1) the plaintiffs are barred from maintaining any of the causes of action alleged in their Complaint by the exclusive remedy provisions of the Pennsylvania Workmen's Compensation Act, Article 3, § 303, P.L. 782, No. 263 § 6, as amended December 5, 1974; 77 P.S. 481 (a); (2) plaintiff, Charles March, was precluded from maintaining a cause of action in Count V of the pleading for breach of the collective bargaining agreement by his failure to exhaust the exclusive remedies and procedures provided in that agreement.

Shortly thereafter the suit was removed to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 1441, and 29 U.S.C. § 185(a). The plaintiffs thereafter filed a Motion to remand the case to state court, which was denied by an Order of the District Court on January 9, 1976.

On October 4, 1976, the employer filed a Motion for Summary Judgment on the grounds that the exclusive remedy

provisions of the Pennsylvania Workmen's Compensation Act, Article III, § 303, as amended, 1974, Dec. 5, P1L, 782 No. 263 § 6, 77 P.S. § 481, barred the employees common law action and that the employees failure to exhaust the exclusive remedies and procedures contained in the collective bargaining agreement between plaintiff's labor union and Allis-Chalmers Corporation, York Plant (R. 2a).

On January 4, 1977, oral agreement relating to the aforementioned Motion was held before the Honorable R. Dixon Herman, and on March 9, 1976, the District Court ruled that there were no issues of material effect and that defendants were entitled to summary judgment as a matter of law. The plaintiffs appealed the judgment to the United States Court of Appeals for the Third Circuit. On February 22, 1978, the Court of Appeals entered an Order affirming the judgment of the District Court. Thereafter on May 17, 1978, plaintiffs filed a Petition for Writ of Certiorari to this Honorable Court.

The plaintiff-employee has admitted from the outset of this action that he had sustained his injuries while in the course of his employment with Allis-Chalmers, and that he had accepted financial benefits from his employer pursuant to the Pennsylvania Workmen's Compensation Act. Furthermore, with respect to his cause of action for breach of the collective bargaining agreement between his union and Allis-Chalmers the plaintiff has conceded that he never filed a grievance or exhausted the remedies provided in the collective bargaining agreement prior to instituting this lawsuit.

ARGUMENT

I. The Federal District Court For the Middle District of Pennsylvania Has Decided the Question of the Employee's Right to Sue His Employer For Injuries Sustained in the Course of His Employment In Accordance with Existing Substantive Law of the Commonwealth of Pennsylvania.

The Pennsylvania Workmen's Compensation Statute, Title 77 P.S. § 1 *et seq.*, was enacted as a humanitarian measure to impose absolute but exclusive liability upon an employer for injuries sustained by an employee in the course of his employment; *Burke v. Duquesne Light Company,* 231 Pa. Super. 412, 332 A2d 544 (1974), *Dupree v. Barney,* 193 Pa. Super. 331, 163 A2d 901 (1960). The Statute contains an exclusive remedy clause in Article III, Section 303 (a); 77 P.S. § 481 (a), which sets forth the following:

> "The liability of an employer under this Act shall be exclusive and in place of any and all other liability to such employees, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in Section 301 (c) (1) and (2) or occupational disease as defined in Section 108."

The Courts in Pennsylvania have uniformly construed the exclusive remedy provisions of the Workmen's Compensation Act to mean that the remedy provided under the Act is exclusive of all common law actions. *Hyzy v. Pittsburg Coal Company,* 384 Pa. 316, 121 A2d 85 (1956); *Hartwell v. Allied Chemical Corporation,* 457 F2d 1335 (3rd Cir. 1972). Thus, the Courts have held that an employee and his spouse are barred from suing his employer at law with respect to injuries that are compensable under the Act. *Scott v. C. E. Powell Co.,* 402 Pa. 73, 166 A2d 31, 34 (1960); *Hartwell v. Allied Chemical Corporation,* 320 F. Supp. 75, 77 (E. D. Pa. 1970) aff'd 457 F2d 1335 (3rd Cir. 1972).

The employee in the present matter concedes that he sustained his injuries during an accident while in the course of his employment with Allis-Chalmers Corporation. Moreover, he admits that he accepted Workmen's Compensation benefits from his employer pursuant to the Act. Yet, he contends he has the right to maintain a common law action against his employer because he has averred in his Complaint that his employer committed an intentional tort of Conspiracy, which he asserts is a cause of action that is outside the exclusive remedy provisions of the statute. The Petitioner premises this position on an inaccurate and misleading assertion that the judicial authorities in Pennsylvania have recognized an exception to the exclusive remedy provision of the Act where an employer has committed intentional tortious conduct.

The Pennsylvania Courts have delineated an exception to the applicability of the exclusive remedy provision of the Act where an employer intentionally inflicts an injury upon an employee, *Readinger v. Gottschall,* 201 Pa. Super. 134, 191 A2d 694 (1963); *Beale v. Holliman,* 8 D & C 2d 758 (1958). However, the Courts of the Commonwealth have uniformly and repeatedly ruled that accidental injuries resulting from an employer's deliberate or intentional violations of a statute were within the scope of the Act, and that suits at common law were barred by the exclusive remedy provisions of the Statute. *Evans v. Allentown Portland Cement Co.*, 433 Pa. 595, 252 A2d 646 (1969); *Shick v. Good Humor Corp.*, 438 F2d 336 (3rd Cir. 1971); *Ulincy v. National Dust Collector Corporation, supra.*

The *Evans* and *Ulincy* decisions, *supra,* have established the principle that the determination of whether a common law action avoids the bar of the exclusive remedy provisions of the Statute rests solely upon the accidental or nonaccidental character of the injury sustained by the employee. Since the Petitioner-employee has pleaded an accidental injury the

question of whether a conspiracy to violate a statute is or is not an intentional tort is not relevant to the determination of the applicability of the statutory defense to bar his causes of action in Counts I through IV of his Complaint.

In the *Evans* case, the deceased minor-employee was assigned by his employer to hand-shovel rock spillage onto a conveyor belt at a point in close proximity to an unprotected area of the belt. The minor sustained fatal injuries when he lost his footing and was dragged into the belt. Plaintiff's complaint alleged wilful, wanton, reckless, negligent, careless, and unlawful acts of Portland Cement Company in connection with the installation and maintenance of the belt and in connection with the assignment of the minor to those duties, allegedly in violation of certain Department of Labor and Industry Rules. The Supreme Court of Pennsylvania held that even though the decedent was allegedly killed as a result of the employer's wilful and unlawful violation of statutory provisions, the act barred common law recovery.[1]

In *Ulincy v. National Dust Collector Corporation, supra,* the District Court for the Eastern District of Pennsylvania applied the decision in the *Evans* case as the controlling authority with respect to the immunity of an employer from common law liability for accidental injuries suffered by an employee even where the employer is charged with intentional violations of statute. The District Court noted in that decision:

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[1] While the petitioner has failed to present an argument to support his cause of action in Count III of his pleading, it is noted that the material averments in that Count of intentional, reckless, and wanton misconduct by the employee are substantially the same as the allegations in the plaintiff's Complaint in the *Evans* case, which was dismissed by the Supreme Court of Pennsylvania pursuant to the exclusive remedy provisions of 77 P.S. § 481 (a).

"Evans is in accord with the overwhelming weight of authority on this point. The general principle as stated in 2 Larson, the Law of Workmen's Compensation § 68.13 (1975) (hereinafter cited as Larson) is as follows:

'Since the legal justification for the common law action is the nonaccidental character of the injury from the defendant employer's standpoint, the common law liability of the employer cannot be stretched to include accident injuries caused by gross, wanton, wilful, deliberate, intentional, reckless, culpable, or malicious negligence, breach of statute or other misconduct short of genuine intentional injury.' "

The District Court in the *Ulincy* decision referred to numerous judicial decisions in other jurisdictions wherein the Courts have held that the employee must aver an *intentional injury* to plead a case that will fall outside the statutory bar to common law suits. *Ross v. State of New York*, 187 N.Y.S. 2d 13 (1959); *Wilkinson v. Achbar*, 131 A.2d 51 (N.H. 1957) and *Bryan v. Jeffers*, 103 N.J. Super. 522, 248 A.2d 129 (1969). In each of those cases, the Appellate Courts dismissed common law suits containing averments of intentional acts or misconduct by an employer, because their employees' injuries were accidental or unintentional. The rationale of the Supreme Court of New York in the *Ross* decision upholding the dismissal of an employees action at law is particularly relevant to the present issue. The Court in that case made the following ruling:

"We think, however, from the undisputed facts revealed in the record that a wilful intention to harm decedent cannot be spelled out from such facts and that viewed in the light most favorable to the claimant nothing more than gross negligence could possibly be found. The common-law liability of an employer cannot be stretched to include accidental injuries caused by gross negligence or other misconduct of the employer short of genuine intentional injuries (Larson's Workmans' Compensation Law, Vol. 2, Sections § 68.13 and § 68.21)."

The District Court applied the criterion set forth in the *Evans* and *Ulincy* cases to determine that the Petitioner-employee had not plead a cause of action that is not precluded by the exclusive remedy clause of the Pennsylvania statute. The Petitioner states in his Brief that the District Court recognized on Page three (3) of its Opinion that the exclusive remedy provisions of the statute could be avoided by a pleading which averred that the employer has committed intentional tortious conduct; yet the Petitioner fails to note that in the following sentence of its Opinion, the District Court made the following assertion:

"In view of the fact that the tort action is founded and the nonaccidental character of the injury insofar as the defendant employer is concerned, the courts have uniformly differentiated between these instances where there is genuine intentional injury inflicted by the employer and those where the injury sustained is simply accidental as the result of an intentional misfeasance or violation of a statutory duty."

The Petitioner also erroneously represents in his Brief that the District Court grounded its ruling upon a characterization of the cause of plaintiff's injury as employer malfeasance rather than intentional tortious conduct. Instead, the Court viewed the Complaint in the light most favorable to the employee and ruled that even if the employee averred the commission of an intentional tort, he has still failed to evade the statutory bar because he has not pleaded that his injuries were intentionally inflicted by the employer. Again the Courts have held that the test is not the characterization of the employer's conduct but the character of the employee's injury. *Evans v. Allentown Portland Cement Company, supra; Ulincy v. National Dust Collector Company, supra; Hyzy v. Pittsburgh Coal Company*, 384 Pa. 316, 121 A2d 85 (1956).

Finally, the Petitioner had raised the argument that since he has sued the Defendants in their individual capacities as well as in their capacity as representative of the Corporation they may be held individually liable under the "fellow employee" statute, 77 P.S. § 72, for any intentional wrong committed upon the person of the plaintiff. Significantly, this argument was never raised either in the District Court or the United States Court of Appeals. Nevertheless, the provisions of that statute abrogate common law liability of co-employees of an injured party while in the course of their employment, except for intentional wrongs. *Jadash v. Goeringer,* 442 Pa. 451, 275 A2d 58 (1971); *Gunshore v. Onore,* 63 Lug. L. Reg. 63 (1973). The Respondent submits that the same criterion relative to the determination of the employees right to sue his employer at law for injuries he sustained in the course of his employment applies to his right to sue a fellow employee for injuries sustained in the course of his employment. *Jadash v. Goeringer, supra.*

Hence, the employee is also barred from maintaining an action against his co-employees for the injuries he sustained in this accident.

II. The District Court has Properly Upheld the Constitutionality of the Pennsylvania Workmen's Compensation Act In Overruling Petitioner's Contentions That Various Provisions of the Statute Violate Constitutional Due Process and Equal Protection Standards.

A. The Conclusive Presumption Clause of the Pennsylvania Workmen's Compensation Act is not Violative of Constitutional Due Process Standards.

The Petitioner attacks the validity of the Conclusive Presumption Provisions of the Pennsylvania Workmen's Compensation Act, Title 77 P.S. § 461, by contending that the Statute raises such a presumption without informing an

employee at the commencement of his employment of his right to elect either the statutory or the common law remedies. He asserts that the failure of the statute to require that an employee be informed of his election of remedies, renders a resultant failure to elect as an involuntary waiver of a right to sue, which he argues, constitutes, a taking of a property right without due process of law.

The provision which the Petitioner attacks as unconstitutional sets forth that in every contract of hiring a conclusive presumption arises that the parties have accepted the provisions of Article III of the Act and have agreed to be bound thereby unless an extension of such contract, an express statement in writing from either party to the other that the provisions of Article III of the Act are not intended to apply. Title 77 P.S. § 431, a counterpart to the statutory presumption provision of the Act, states that acceptance of the provisions of the Statute may be implied in the employee's acceptance of the employment contract. Hence, the terms of the statute are incorporated into the employment contract and any vested contract rights which the employee are derived from the Statute. *Demartino v. Zurich Insurance Company,* 307 F. Supp. 571, 573 (E.D. Pa. 1969).

In arguing against the constitutionality of the Pennsylvania Act, the Petitioner fails to recite that he has voluntarily accepted the financial benefits which he is entitled under the Statute for his employment related injuries. Yet, his acceptance of compensation under the Act is in itself a clear indication of his acceptance of the Statute. *Hartwell v. Allied Chemical Corporation,* 320 F. Supp. 75, 76 (E.D. Pa. 1970).

Furthermore, the Petitioner disregards the compelling and beneficial purposes which the Pennsylvania statute fulfills. The statutory presumption does not result in a taking away of a property right, but rather an exchange of one remedy for another. The employee receives economic insurance that his

employment-related injuries will be compensated. He surrenders the right to sue employers or fellow employees for negligence but he no longer must prove negligence, his own contributory negligence is no longer a bar, and he too can no longer be sued for negligence by a fellow employee. *Jadash v. Goeringer, supra.*

The District Court noted in its Opinion that the rationale for the statutory presumption is not that of a waiver of rights but in fact a presumption of more favorable treatment of the employee. And on several previous occasions the United States Supreme Court has upheld the beneficial purposes derived from the exchange of remedies:

> "It is plain that, on grounds of natural justice, it is not unreasonable for the state, while relieving the employer from responsibility for damages measured by common-law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount and according to a reasonable and definite scale, by way of compensation for loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall—that is, upon the injured employee or his dependants. Nor can it be deemed arbitrary and unreasonable from the standpoint of the employee's interests, to supplant a system under which he assumed the entire risk of injury in ordinary cases, and in others had a right to recover an amount more or less speculative, upon proving facts of negligence that often were difficult to prove, and to substitute a system under which, in all ordinary cases of accidental injury, he is sure of definite and easily ascertained compensation, not being obliged to assume the entire loss in any case, but in all cases assuming any loss beyond the prescribed scale." *New York Central Railroad Co. vs. White,* 37 S. Ct. 247, 251, 243 U.S. 188 (1917); *Mountain Timber Co. vs. Washington,* 37 S. Ct. 260, 243 U.S. 219 (1917).

To sustain the employee's position with respect to the constitutional validity of the statutory presumption provision of the Workmen's Compensation Act in Pennsylvania, Title 77 P.S. § 461, and its counterpart, the implicit acceptance clause of that Act, Title 77 P.S. § 431, would defeat the essential purpose of that Statute to provide compensation to employees for work-related injuries irrespective of the question of negligence, and would encourage employers to reject the act. As this Court recently noted in the case of *O'Neill vs. U.S.*, 450 F. 2d 1012 (3rd Cir. 1971):

> "That he may no longer be immune to common law suits even though he participates in and contributes to the compensation program would be a consideration of great weight to an employer. In this industrial age, a viable Workmen's Compensation law is a necessity as a matter of public policy."

B. The Exclusive Remedy Provisions of the Pennsylvania Workmen's Compensation Act, 77 P.S. Section 481 (a) which Bars an Employee from Bringing a Suit at Law Against an Employer for a Violation of a Safety Law do not Violate any Constitutional Safeguards Afforded Under the Equal Protection Clause.

The Equal Protection Clause of the Constitution safeguards individuals from intentional and invidious discrimination in the enactment and enforcement of laws. *State ex rel. Mulhein vs. McHenry,* 31 Conn. Super. 172, 326 A.2d 132 (1974). However, the equal protection standard does not prohibit all discrimination, but forbids only invidious or arbitrary discrimination by statute or other state action. *People ex rel. Jones vs. Adams,* 350 N.E. 2d 767 (Ill. Appl. 1976). The Constitutional standard under this clause is whether the challenged state law or action rationally furthers a legitimate state purpose or interest. *San Antonio Independent School District vs. Rodriguez,* 93 S. Ct. 1278, 411 U.S. 1, 36 L.Ed. 2d 16 (1973).

The Workmen's Compensation Act adopted by the Commonwealth of Pennsylvania certainly furthers a significant state interest. The statute is authorized by the police powers of the state and is frequently referred to as a humitarian measure. *Dupree vs. Barney, supra.*

> "The statute was designed to impose absolute liability upon an employer when his employee suffered injury in the course of the employment. Such absolute liability in the amount of the Workmen's Compensation Agreement, lies against the employer regardless of fault and therefore a suit against the employer by the employee is not permitted under the Act." *Burke vs. Duquesne Light Co.*, 231 Pa. Super. 412, 332 A.2d 544 (1974).

Furthermore, there exists a rational basis for the legislature to shield employers who have been paid out Workmen's Compensation benefits from liability at law for injuries sustained by employees in an accident in the course of their employment, while precluding employees who commit statutory violations from the benefits of the statute. Under the provisions of 77 P.S. § 431, prior to its amendment of 1974, if the parties accepted the provisions of the statute, the employer would be required to pay compensation to his employee for personal injuries sustained in the course of his employment. However, an employee who was injured while committing a statutory violation would be excluded from compensation benefits because he was not injured in the course of employment. *Rich Hill Coal Co. v. Bashore*, 334 Pa. 449, 7 A.2d 302 (1939). The Pennsylvania Supreme Court noted in the *Bashore* decision that the rationale for this particular statutory exclusion is that the Pennsylvania Constitution does not provide the Legislature with the power to provide compensation to employees whose injuries do not arise in the course of their employment. *Rich Hills Coal Co. vs. Bashore, supra.* Thus, an employee may be barred from obtaining Workmen's Compensation benefits, because his statutory violation breaks the

continuity of employment; however, he may still have a remedy at law against his employer, though he would be subject to the employer's defense that the employee's statutory violation caused his injuries.

On the other hand, where an employee sustains injuries in an accident resulting from an employer's statutory violation, the employee has nevertheless sustained the injury while within the course of his employment, and is thereby eligible to receive the benefits provided under the statute and his contract of employment and the employer would be required to pay the benefits to the injured employee.

Yet, it would defeat the purpose of the statute to subject an employer, who has elected to accept the imposition of absolute, but limited, liability for injuries sustained by an employee in the course of his employment, to common law liability for those same injuries resulting from his breach or violation of a safety statute. *Hartwell v. Allied Chemical Corporation*, 320 F. Supp. 75 (E.D. Pa. 1970).

The statute was enacted to impose upon an employer absolute, but exclusive, liability for injuries sustained by an employee in the course of his employment. *Burke v. Duquesne Light Company, supra.* If any employee were allowed to collect compensation under the statute, and also to recover damages at common law for the same injuries, no employer would elect to participate in the system.

In short, the statute embodies a rational and reasonable classification of employees entitled to compensation. And the judiciary has upheld these classifications on the basis of the necessary and viable public policy purposes which are served by the statute. Hence, there is no equal protection violation in restricting employees to their statutory remedy when they are injured in accidents resulting from employer's statutory violations, but relegating employees to pursue a common law

remedy in instances where they commit acts such as violations of a statute, which place them outside the scope of course of their employment.

III. The Petitioner is Barred From Maintaining a Cause of Action For Breach of a Provision of the Collective Bargaining Agreement Between Allis-Chalmers and Petitioner's Labor Union By his Failure to Exhaust the Grievance Procedure contained in that Agreement.

In the present matter the Petitioner averred a cause of action in Count V of his Complaint for personal injuries resulting from the Respondent-employer's breach of § 26.1 of the Collective Bargaining between Allis-Chalmers and the employees labor union. Section 26.1 of that Agreement sets forth that the Company will provide its employees with a safe place to work.

Article I of the Collective Bargaining Agreement provides that the Company recognizes the Union as the sole and exclusive collective bargaining agency for all production and maintenance employees, and sets forth that the provisions of the labor contract shall apply to all employees covered by the Agreement. Article XXI of the Collective Bargaining Agreement outlines specific procedures to be followed in the event of any contract grievance. In Subsection 21.1 of that Article a grievance is defined as . . . "A controversy between the Company and the Union or between the Company and an employee covered by this Agreement concerning compliance with the provisions of this Agreement."

In the case of *Republic Steel Corporation v. Maddox,* 397 U.S. 650, 85 S. Ct. 614, 13 L. Ed. 2d 580 (1964) this Court enunciated the well established principle that an individual employee who claims that his employer has violated a Collective Bargaining Agreement is bound by the terms of that agreement as to the method of enforcing his claim, and where

an exclusive grievance procedure has been agreed upon the employee must pursue that route before seeking relief in court, and failure to exhaust contractual remedies will constitute a defense by the employer.

In the case *Harris v. Chemical Leaman Tank Lines, Inc.,* 437 F2d 167, 170 (5th Cir. 1971), the Court of Appeals for the Fifth Circuit ruled that where responsibility for processing disputes under a labor contract is vested solely in the union, the employee must rely upon the union to exhaust contractual remedies in his behalf, and to enforce compliance with those remedies by the employees.

The District Court for Wisconsin has recently ruled that when a collective bargaining agreement makes the labor union the exclusive bargaining agent for the employees, federal law requires an employee with a grievance to attempt use of the contract grievance procedures before commencing an action in Court. *Mikelson v. Wisconsin Bridge and Iron Co.,* 359 F. Supp. 444 (D.C. Wisc. 1973).

The Collective Bargaining Agreement in effect between Allis-Chalmers and the Petitioner's labor union on the date that the Petitioner sustained his injuries which form the basis for his cause of action against Allis-Chalmers, designates the labor union as the exclusive bargaining agent for employees of Allis-Chalmers and provides for specific greivance procedures to enforce a claim against the employer for breach thereof. The Petitioner has conceded that he failed to utilize the grievance procedure outlined in the agreement in pursuing his claim for violation of § 26.1 of the contract. In light of the decisions cited above, he is therefore barred from maintaining a cause of action at law for the contractual breach.

The employee, however, argues that he derives certain personal rights as a third-party beneficiary of the contract which

are separate and distinct from the rights set forth in the contract itself and which allow him to maintain his cause of action. Specifically, he maintains that since the contract does not address itself to the monetary remedy he seeks, and as the grievance procedures outlined in the agreement are insufficient to redress the alleged breach by his employer, he has the right to recover damages against the employer as a third-party beneficiary of that contract. The employee's argument disregards the following fundamental principle relative to the rights of third-party as stated by the Pennsylvania Supreme Court:

> "The foundation of any right the third-party may have, whether he is a donee beneficiary or a creditor of the promisee, is the promisor's contract. Unless there is a valid contract, no right can arise in favor of anyone. Moreover, the rights of the promisee must be limited by the terms of the promise . . . Broadly speaking, not only must any formal requirements be complied with, but the beneficiary also takes subject to the due performance of all express and implied conditions affecting the promise in which he is interested." *Williams v. Paxon Coal Company*, 356 Pa. 468, 471, 31 A2d 69, 70 (1943).

In the case of *Falsetti v. Local Union No. 2026, United Mine Workers*, 400 Pa. 145, 161 A2d 882, 893 (1960), the Pennsylvania Supreme Court applied these same concepts in holding that the rights of an employee as a third-party beneficiary to a Collective Bargaining Agreement are derived solely from the Agreement itself.

The application of basic legal principles governing the rights of a third-party beneficiary to a contract establish that in the present matter the employee's rights and remedies under the collective bargaining agreement between Allis-Chalmers and the employee's labor union are limited to the provisions in the agreement itself. Since he failed to invoke and exhaust those procedures prior to instituting his cause of

action in Count V of the Complaint the Plaintiff-Employee, is barred from maintaining his cause of action. Accordingly, the District Court properly dismissed Count V of the Complaint.

Conclusion

United States Supreme Court rule 19 relative to considerations governing review on certiorari provides that a review on writ of certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefore. The Petition presently before this Honorable Court fails to set forth a single, compelling reason to invoke review of the decision of the United States District Court and the *per curiam* decision of the United States Court of Appeals for the Third Circuit.

The decision granting summary judgment in favor of the Respondent-employer is substantiated by the statutory and judicial authorities in the Commonwealth of Pennsylvania relative to the applicability of the exclusive remedy provisions of the Pennsylvania Workmen's Compensation Act, 77 P.S. § 481(a), as a bar to the employee's cause of action to recover against his employer for an "accidental injury." Moreover, the contentions that the statute is violative of constitutional equal protection and due process standards is equally unmerited for the Pennsylvania Act, as every other Workmen's Compensation Act in this Country, was enacted for the benefit of employees, and with the purpose of ensuring that workers received some financial compensation for injuries they sustained in employment-related accidents, irrespective of fault. These statutes have withstood allegations of similar constitutional violations for over sixty (60) years and have been upheld by the Courts on the basis of the humanitarian public policy they embody. *Welsh v. Pittsburgh Terminal Coal Corp., supra.*

Finally, the employee's argument that he has a right as a third-party beneficiary to enforce a cause of action at law for breach of a Collective Bargaining agreement in contrary to the principles established by this Court in *Republic Steel Corporation v. Maddox, supra.*

According, the Respondent, Allis-Chalmers Corporation, requests that this Honorable Court deny the Petitioner for Certiorari.

Respectfully submitted,

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